

together with any available documentation concerning the risk of damage to the coastal environment of the requesting State that could occur as a result of the establishment of a deepwater port; and

(4) State why the requesting State believes the risk of damage to its coastal environment is equal to or greater than the risk posed to a State connected by a pipeline to the proposed deepwater port.

(c) The application staff transmits a copy of each request submitted in accordance with paragraph (b) of this section to the Administrator of the National Oceanic and Atmospheric Administration and requests his recommendations within a period of time that will allow the Secretary to determine the matter within 45 days after the date the request was received.

(d) If, after having received the recommendation of the Administrator of the National Oceanic and Atmospheric Administration, the Secretary determines that there is a risk of damage to the coastal environment of the requesting State equal to or greater than the risk posed to a State directly connected to the proposed deepwater port, he grants the request and designates the requesting State as an adjacent coastal State. If he determines that there is not such a risk, he denies the request and so notifies the Governor of the requesting State.

[CGD 75-002, 40 FR 52553, Nov. 10, 1975, as amended by CGD 88-052, 53 FR 25121, July 1, 1988; CGD 96-026, 61 FR 33665, June 28, 1996; CGD 97-023, 62 FR 33363, June 19, 1997]

**§ 148.219 Claims and objections.**

(a) Any person required to furnish information may assert, as ground for relief from the requirement, any failure to comply with this part or any other constitutional or legal right or privilege.

(b) In general, claims relating to documents must be made on filing an application or on receiving a determination by the Secretary pursuant to § 148.109(z).

(c) If a person claims attorney-client privilege, he must identify the communication by date, type of communication, persons making and receiving the communication, and general subject

matter. If the required information is in a separable part of a communication, such as an attachment to a letter, the separate part must be similarly identified. The identification must be filed with the clerk or as a document pursuant to § 148.269.

(d) Any document claimed to be protected by section 14(b) of the Act must be placed in a sealed envelope, containing the name of the person claiming the protection and of the applicant, and the date or anticipated date of the application. A brief statement of the basis of the claim must be included, either on the envelope or separately. If a number of documents are involved, they must be grouped according to nature of claim, and a self-explanatory numbering system used for envelopes and documents.

(e) Written objection to any claim may be made by any Federal or State department or agency, or any applicant, affiliate, party or other interested person. The objection shall include a brief statement of its basis and identify the documents to which it applies.

(f) Except as provided in paragraph (g) of this section, the General Counsel shall determine, or designate a person to determine, issues raised by any claim filed under this section. A designation by the General Counsel may specify procedures to be used in resolving the issue or may leave some or all of the procedural matters to the discretion of the designated person. The proceedings pursuant to a designation shall be reported to the General Counsel, who shall approve, modify or disapprove the reported findings and conclusions.

(g) Any person making or objecting to a claim, or other interested person, may at any time file with the General Counsel a request or recommendation as to procedures. The General Counsel may act upon it or refer it to a person designated to resolve the issue.

(h) At any formal or informal hearing the presiding officer may permit any person to assert any claim that could be filed under this section and may determine any issue raised by the claim or, in his discretion, refer it to the General Counsel for resolution pursuant to paragraph (f) of this section.

(i) The filing of any claim under this section, other than a claim of document protection under paragraph (d) of this section, shall stay the time for meeting any information required to which the claim relates, but shall not stay the periods for processing and review of an application unless the Secretary determines that compliance with the requirement is material to processing of the application within the time prescribed in the Act. If the Secretary determines that it is material, he may suspend the application pending a determination that processing can be resumed. The period of any suspension shall not be counted in determining the date prescribed by the time limit set forth in section 4(c)(6), 5(d)(3), 5(e)(2), 5(g), 7(b)(11) or 9(b)(1) of the Act.

(j) Any determination by the General Counsel under paragraph (f) of this section may be appealed to the Secretary for good cause shown.

#### INFORMAL PUBLIC HEARING

##### **§ 148.231 Notice of public hearing.**

After all applications in a proceeding are docketed, the Commandant issues a notice of public hearing and mails or delivers it to any person who requests it and to each applicant and adjacent coastal state. The clerk docketed the notice when it is published. Each notice shows the time and place for the hearings, formulates the factual issues in the proceeding, procedural matters to govern the hearings, and designates the presiding officer assigned by the Commandant for the hearing.

##### **§ 148.233 Testimony and argument.**

Interested persons may attend any public hearing, present relevant material at the hearing, and submit briefs and oral argument at a time determined by the presiding officer during the hearing.

##### **§ 148.235 Report of public hearing.**

As soon as practicable after a public hearing is completed, the presiding officer forwards a report of the hearing to the clerk for docketing. The report at a minimum contains a summary of the materials presented and factual

issues raised at the hearing and has attached to it a transcript of the hearing and all relevant materials and briefs submitted to the presiding officer. The presiding officer determines and announces to the participants during the course of the hearing what material will be attached to the report.

#### FORMAL HEARING

##### **§ 148.251 Determination to hold formal hearing: notice of formal hearing.**

(a) After the reports of public hearings are docketed in a proceeding, the Commandant determines whether there are specific and material factual issues concerning the applications that may be resolved by a formal hearing. If he determines that a formal hearing is necessary, he issues notice of formal hearing to the applicants, the application staff, and the administrative law judge.

(b) A notice of formal hearing lists the factual issues for resolution at the hearing, the applicants, and the administrative law judge assigned to conduct the hearing.

(c) The clerk mails or delivers a copy of the notice of formal hearing in a proceeding to each adjacent coastal state and to each person who requests notice of formal hearing.

##### **§ 148.253 Assignment of administrative law judge: disqualification.**

(a) The Commandant assigns the administrative law judge for a formal hearing.

(b) The administrative law judge may disqualify himself at any time after assignment by filing notice of withdrawal from the proceeding. If on motion of a party the administrative law judge does not disqualify himself, the party may appeal the ruling to the Commandant by filing notice of appeal within seven days after the ruling on the motion. A brief may be filed with the notice of appeal.

(c) If the assigned administrative law judge becomes unavailable during the proceeding, another administrative law judge is assigned.